

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF THE CITY OF RICHMOND, KY

These Comments are filed by the City of Richmond, KY in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Richmond, KY believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Richmond, KY ("City") is a city located in central Kentucky, with a population of 30,000. Our franchised cable provider is Adelphia Communications. Our community has negotiated cable franchises since 1983.

Our Current Franchise

Our current franchise began on July 7, 1999 and expires on July 6, 2114. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. However,

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pursuant to HB 272, as of January 1, 2006, the local cable franchising authorities in Kentucky no longer receive cable franchise fees. Instead, the Commonwealth of Kentucky imposes a 3% excise tax on multichannel video programming service. The tax is billed to subscribers and collected by providers. Additionally, the Commonwealth of Kentucky imposes a tax of 2.4% on gross revenues from multichannel video programming services and a tax of 1.3% on gross revenues from communication services. According to HB 272, local cable franchising authorities will be "held harmless" by the state for the amount of cable franchise fee revenue they have historically collected.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to public access; 1 channel devoted to educational access; and 1 channel devoted to government access. Section 18 of our franchise requires that our PEG channels be supported in the following ways by the cable operator:

- (f) The Grantee shall, throughout the term of the franchise, provide at least one studio facility for public access. The studio facility shall be available not less than fifteen (15) hours per week. Users shall reserve such facility with the Grantee for use between 2:00 P.M. and 5:00 P.M. Monday through Friday or at other times upon mutual agreement.
- (g) The Grantee shall replace and repair its access studio facilities and equipment as necessary. The studio facility available for public access use shall be capable of live and taped program origination on the local public access channel. The Grantee shall make the facilities available on a first come, first served, nondiscriminatory basis to residents of the City of Richmond or organizations which serve the franchise area. There shall be no charge to qualified users for up to five (5) hours per month of studio production time.
- (h) The Grantee shall maintain adequate staff and/or equipment to operate playback of access programming from the Grantee's facilities for the public access channel.
- (i) The Grantee shall provide a minimum of two portable video cameras, available full-time to access users, for the purpose of producing programming for the system's public access channel. Any persons using such equipment may be required to participate in training given by the Grantee and give a reasonable deposit to the Grantee for the use of such equipment. If persons request training, the Grantee shall provide such training free of charge.
- (j) The Grantee shall make available, full-time to public access users, offline editing facilities for the purpose of producing programming for the system's public access channels. Such editing equipment shall be configured so that the editing facilities can be available when the studio is in use.

Also, Section 18 requires that Grantee shall provide to the Government a \$50,000.00 grant, to provide repair and maintain the equipment necessary to broadcast live and taped programming from Richmond City Hall.

Section 19 of our franchise contains the following requirements regarding emergency alerts:

- (a) Within 30 days of the granting of this franchise, the Grantee shall incorporate into its cable television system, the capability which will permit the Mayor (or his/her designee) and the Madison County Disaster and Emergency Services Director (or his/her designee), in times of emergency, to override, by remote control, the audio of all channels simultaneously.

These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Section 26 provides as follows:

(a) Office Hours and Telephone Availability.

(1) The Grantee will maintain an office within the confines of the City of Richmond at which subscribers may pay bills, report service or billing problems, request service or exchange equipment, and which shall be open during normal business hours and be conveniently located.

(2) The Grantee will provide a local, and a toll-free or collect call, telephone access line which will be available to its subscribers twenty four (24) hours a day, seven (7) days a week.

(i) Trained representatives of the Grantee will be available to respond to customer telephone inquiries during normal business hours. Each such employee shall be trained to perform efficiently the various tasks, including responding to consumer inquiries and complaints, necessary to provide consumer services in a responsible and courteous manner.

(ii) After normal business hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee within one (1) business day after receipt of the complaint.

(3) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions.

(4) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(b) Installation Outages and Service Calls: Each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Installations within 125 feet of the existing distribution system will be performed within seven (7) days after an order has been placed unless scheduled at a later time by customer request.

(2) Grantee will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known. The Grantee must begin actions to correct other service problems the next business day after notification of the service problem. Under normal operating conditions, all repairs must be completed within seventy-two (72) hours. If conditions exist which are not within the control of the Grantee, as defined by Section I (u) of this ordinance, repairs must be completed as soon as reasonably possible.

(3) When a subscriber requests a change in the type of Cable Service or Non-Cable Service he/she is currently receiving, the Grantee must begin action to change the type of service provided the next business day after notification. If the desired change is not made within seven (7) days of notification, and the change would decrease the subscriber's bill, the Grantee shall credit the subscriber's bill despite the fact that the service has not been changed.

(4) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The Grantee may schedule service calls and other installation activities outside of normal business hours for the expressed convenience of the customer.)

(5) The Grantee may not cancel an appointment with a customer after close of business on the business day prior to the scheduled appointment.

(6) If a representative of the Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(c) Communications Between Grantee and Cable Subscribers

(1) Notification to subscribers

(i) The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(A) Products and services offered;

(B) Prices and options for programming services and conditions of subscription to programming and other services;

(C) Installation and service maintenance policies;

(D) Instructions on how to use the Cable Service and Non-Cable Service;

(E) Channel positions of programming carried on the system;

(F) Billing and complaint procedures, including the address and telephone number of the Government's cable officer;

(G) A description of Grantee's policies concerning credits for outages and reception problems, consistent with these consumer protection standards; and

(H) The local or toll-free numbers for Grantee's subscriber service telephone system.

(ii) Customers will be notified of any change in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing using any reasonable means at the Grantee's sole discretion. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify subscribers thirty (30) days in advance of any significant changes in other information required by the preceding paragraph.

(2) Billing--

(i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii) In cases of a billing dispute, the Grantee must respond to a written complaint from a subscriber within thirty (30) days.

(iii) The Grantee shall not assess a late fee on subscribers' bills which are paid within thirty (30) days.

(3) Refunds - Refund checks will be issued promptly, but no later than either:

(i) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or

(ii) The return of the equipment supplied by the Grantee if service is terminated.

(4) Credits-

(i) Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(ii) When the use of service or equipment furnished by the Grantee is interrupted due to any cause other than the negligence or willful act of the subscriber or the failure of equipment provided by the subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, upon the request of the subscriber, for the service and equipment rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of four (4) hours from the time it is reported to or detected by the Grantee. For purpose of this section, every month is considered to have thirty (30) days.

Our original franchise from 1983 contains the following reasonable build schedule for the cable operator: The cable operator was required to make a 34 channel cable system with 54 channel capability available to at least 20% of the homes in the City, within one year. Within two years, the cable operator was required to make said service available to every dwelling unit in the City. Our current franchise requires that the cable operator currently provide service to all dwelling units in the City.

In order to ensure that our residents have access to current telecommunications technologies, Section 13(a) of our franchise contains the following rebuild or upgrade requirements:

Within three (3) years after the enactment of this Ordinance, the Grantee shall have upgraded the cable system as described in this Ordinance. The upgraded cable system shall be designed, spaced and constructed to a 750 MHz design by a date that is no later than three (3) years, or sooner if possible, from the effective date of this franchise. The fiber system shall have a maximum of five hundred (500) subscribers to the node. Where technically advisable, the system shall use all new fiber optics, coaxial cable and electronic and passive devices.

Please note that our cable system provides cable modem service to the same set of residents which receive cable video services.

Section 7 of our franchise contains the following insurance requirements:
General Liability Insurance insuring Grantee in the minimum of:

1. \$500,000.00 for property damage per occurrence;
2. \$1,000,000. 00 for property damage aggregate;
3. \$1,000,000.00 for personal bodily injury or death to any one person; and
4. \$3,000,000.00 for bodily injury or death aggregate per single accident or occurrence.

Comprehensive Automobile Liability Insurance insuring Grantee for owned, non-owned, or rented vehicles in the minimum amount of:

1. \$1,000,000.00 for bodily injury and consequent death per occurrence;
2. \$1,000,000.00 for bodily injury and consequent death to any one person; and
3. \$500,000.00 for property damage per occurrence.

Section 8 of our franchise requires a twenty thousand dollar (\$20,000) letter of credit.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way

Section 10(a) of the franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

- (1) For failure to complete construction and installation of the system, complete line extensions, or provide service in accordance with this Ordinance and the Grantee's application as incorporated herein, unless the City Commission specifically approves the delay by resolution or because of reasons beyond the control of the Grantee, Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.
- (2) For failure to provide data and reports as requested by the Government and as required in Sections 9 and 37, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(3) For failure to comply with the operational standards following the City Commission's resolution directing Grantee to make improvements pursuant to Section 25, Grantee shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.

(4) For failure to test, analyze, and report on the performance of the system following the request of the Government pursuant to Sections 22 and 23, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(5) For failure to pay the franchise fee when due pursuant to Section 9, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(6) For failure to comply within thirty (30) days of any City Commission resolution directing compliance with any other provisions of this ordinance, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

Section 10(b) states that before the Government may assess any penalties under this section and before any sums are withdrawn from the letter of credit, the Government shall give the Grantee written notice and an opportunity to be heard in accordance with the following procedure:

(1) The Government shall notify the Grantee, in writing, of an alleged failure to comply with the provisions of this Ordinance as outlined in Section 10(a), which notice shall specify the alleged failure.

(2) The Grantee shall, within twenty-one (21) days after receipt of the notice or such longer period as the Government may specify in such notice, either cure the alleged failure or, in a written response to the City Commission, either present facts and arguments in refutation or excuse of such alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.

(3) The City Commission shall determine (i) whether a failure to comply with a provision of the franchise has occurred; (ii) whether such failure is excusable; and (iii) whether such failure has been or will be cured by the Grantee.

(4) If the City Commission determines that a failure to comply with a provision of the franchise has occurred and that such failure is not excusable and has not been or will not be cured by the Grantee in accordance with a schedule satisfactory to the City Commission, the City Commission shall hold a public hearing to determine whether the penalties specified in this section shall be imposed on the Grantee. The City Commission shall provide twenty-one (21) days written notice of the public hearing to the Grantee. During the public hearing, Grantee shall have the right to call and to cross-examine witnesses and to present evidence. If, based on the evidence presented during the public hearing, the City Commission determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule satisfactory to the City Commission or that the failure is excusable, such determination shall conclude the investigation.

(5) Following the public hearing and a majority vote of the City Commission finding that a failure to comply with a provision of the franchise has occurred and that such failure is not excusable and has not been or will not be cured by the Grantee in accordance with a schedule satisfactory to the Government, the City Commission may issue a written decision ordering penalties in accordance with this section. Such decision shall be served on the Grantee and shall be subject to judicial review as provided by law.

(6) Any other provision of this ordinance notwithstanding, the Grantee shall not be liable of delay in performance of, or failure to perform, in whole or in part, its obligation pursuant to this ordinance or any franchise granted hereunder due to strike or other labor action, war or act of war (regardless of whether an actual declaration of war is made), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, equipment malfunction, sabotage or other events, where the Grantee has exercised all due care in the prevention thereof and to the extent that such causes or other events are beyond the Grantee's control.

(c) The Grantee shall replenish the letter of credit within thirty (30) days after a final decision is rendered by a court of competent jurisdiction which affirms or upholds the action taken by the City Commission pursuant to this section.

(d) Grantee shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any one or more of such terms or conditions. Payment of penalties shall not excuse nonperformance under this ordinance.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Section 6(b) of our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

If federal or state regulations alter the required services, fees, costs, conditions or standards upon which the cable system is to operate, the Government shall have the right to amend this ordinance to make it consistent with the modified federal or state laws. Any such amendment shall be limited to the specific change in federal or state law.

Please noted, that in addition to federal law, Section 163 of the Kentucky Constitution, requires that cable operators must obtain franchises to use city or county streets for any purpose. It is significant to note that the debates of the Constitutional Convention indicate that the purpose of Section 163 "was to prevent the Legislature from authorizing the indiscriminate use of the streets of the city by public utilities without the city being able to control the decision as to what streets and what public ways were to be occupied by such utilities." Mt. Vernon Tel. Co., Inc. v City of Mt. Vernon, 230 S.W.2d 451, 453 (Ky. Ct. App. 1950). In Ray v. City of Owensboro, 415 S.W. 2d 77, 79 (Ky. Ct. App. 1967), the court also stated that the "purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants."

In City of Owensboro v. Top Vision Cable Co. of Ky., 487 S.W.2d 283, 286-87 (Ky. Ct. App. 1972), where Top Vision Cable claimed that Owensboro lacked the authority to require that local CATV operations obtain franchises, the Court reiterated the interpretation of Section 163 that was set forth in Ray. The court also rejected Top Vision's argument that the city could not issue franchises because the "cables and wires will be placed on poles and strung over public ways where existing utility companies have the right to operate by other franchises." City of Owensboro, 487 S.W. 2d at 287. The court stated, "under its general obligation to provide its citizens with safe, clean and unobstructed public ways, the presence of television cables, even in connection with existing utilities, would be an added burden on the city." Id. Thus, the court concluded that the city had the right to require a franchise because the presence of television cables would be an additional responsibility.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service. However, the City does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the City of Richmond, KY. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

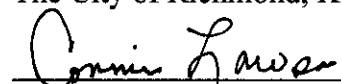
Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Richmond, KY therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

The City of Richmond, KY

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